

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	
<b>ALTAMONT, TENNESSEE LAND COMPANY</b>	)	<b>DIVISION OF WATER POLLUTION CONTROL</b>
	)	
<b>RESPONDENT</b>	)	<b>CASE NUMBER WPC07-0223</b>
	)	

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**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

**II.**

Altamont, Tennessee Land Company (hereinafter “the Respondent”) is a corporation licensed in the state of Florida, conducting business in the state of Tennessee and, is the owner and developer of Hunters Ridge Subdivision, a residential development located on Gap Road in Grundy County (hereinafter “the site”). Service of process may be made on the Respondent through C. Ray Greene III, Registered Agent, at P.O. Box 1956, Ocala, Florida 34478.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

### **V.**

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI) a site specific Storm Water Pollution Prevention Plan (SWPPP) and appropriate fee.

## **VI.**

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **VII.**

Firescald Creek and its unnamed tributaries, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## **FACTS**

## **VIII.**

On April 4, 2006, division personnel from the Chattanooga Environmental Field Office (CHEFO) investigated a complaint that Firescald Creek in the Savage Gulf State Natural Area was discolored during rain events. Division personnel determined that the source of this discoloration was sediment resulting from construction activities at the site. Division personnel noted that greater than one of acre of disturbance had occurred, no Erosion Prevention and Sediment Control (EPSC) measures had been installed, recently cut roads were not stabilized and

eroded material had migrated into two tributaries to Firescald Creek. Additionally, at least two road crossings had been constructed over tributaries to Firescald Creek. A file review indicated that coverage under the TNCGP and written ARAP authorization had not been requested or issued for these activities.

## **IX.**

On April 17, 2006, the division issued a Notice of Violation (NOV) to the Respondent for the violations noted during the April 4, 2006, complaint investigation. The NOV instructed the Respondent to immediately install effective EPSC measures, remove sediment accumulated in the tributaries adjacent to the road crossings and submit a NOI, SWPPP, site map and appropriate fee in order to obtain coverage under the TNCGP within fourteen days of receipt of the NOV. The Respondent was also informed of the requirement to obtain written authorization under an appropriate ARAP prior to performing stream alterations.

## **X.**

On May 5, 2006, the Respondent submitted a NOI, site map and a fee of TWO HUNDRED FIFTY DOLLARS (\$250.00) in order to obtain coverage under the TNCGP. The NOI indicated that less than one acre of disturbance was planned at the site. Jack A. Greene, representing the Respondent, signed the NOI as the site owner/developer contact and also as primary contractor at the site.

## **XI.**

On May 30, 2006, the division issued correspondence informing the Respondent that the NOI was deficient because it did not address the total land disturbance previously observed and

that a SWPPP had not been submitted with the NOI. Coverage under the TNCGP was not issued based on these deficiencies.

## **XII.**

On October 11, 2006, the Respondent submitted a revised NOI, a SWPPP and the appropriate fee to the division. This amended NOI and SWPPP indicated a planned land disturbance of 492 acres. Jack Greene signed the amended NOI as President of the Altamont Tennessee Land Company, Inc. and as primary contractor at the site.

## **XIII.**

On November 6, 2006, division personnel conducted a follow-up site inspection. Based on conditions observed that day, division personnel determined that the amended SWPPP did not meet the requirements of the TNCGP. Additionally, division personnel noted that the site had not been stabilized as requested in the April 17, 2006, NOV. The Respondent was instructed to attend a Compliance Review Meeting (CRM) at the CHEFO on November 20, 2006.

## **XIV.**

On November 20, 2006, a CRM was conducted at the CHEFO. During the CRM, the Respondent was instructed to prepare and submit an amended SWPPP based on the conditions observed during the site visit of November 6, 2006. The Respondent was instructed to specifically focus on site-wide stabilization practices to be addressed by the SWPPP.

## **XV.**

On August 29, 2007, division personnel conducted a follow-up site inspection and noted that large areas of the site, along with the road crossings, were not stabilized. Existing EPSC measures were inadequate and had not been maintained and eroded material had continued to migrate into the tributaries to Firescald Creek. A subsequent file review determined that the amended SWPPP requested during the November 20, 2006, CRM had not been submitted as required and that coverage under the TNCGP had not been issued.

## **XVI.**

On September 13, 2007, division personnel returned to the site to assess the impact of construction activities to the tributaries to Firescald Creek and conduct a Natural Resource Damage Assessment (NRDA). Division personnel again noted that existing EPSC measures had not been maintained and that eroded material had continued to migrate into the tributaries to Firescald Creek.

## **XVII.**

On September 14, 2007, the division issued a NOV to the Respondent for the violations noted during the August 29, 2007, and September 13, 2007, site inspections. The NOV instructed the Respondent to install and maintain appropriate EPSC measures and stabilize all slopes within 7 days of receipt, submit an acceptable SWPPP to the division by September 24, 2007, and within two weeks of receipt, submit a Corrective Action Plan (CAP) for the removal of sediment from the affected tributaries to Firescald Creek.

## **XVIII.**

On October 4, 2007, division personnel returned to the site to complete the NRDA and to assess compliance with the September 14, 2007, NOV. Division personnel noted that attempts at stabilization of the roadside ditches had been made and that EPSC measures had been improved, but that these new measures were still inadequate, had not been maintained, and that eroded material continued to migrate into the tributaries to Firescald Creek.

## **XIX.**

During the course of investigation, the division incurred DAMAGES in the amount of ONE THOUSAND SEVEN HUNDRED SEVENTY TWO DOLLARS AND NINETY FIVE CENTS (\$1,772.95).

## **VIOLATIONS**

## **XX.**

By conducting land disturbance activities without coverage under the TNCGP and by altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

**XXI.**

By causing a condition of pollution in the tributaries to Firescald Creek, the Respondent has violated T.C.A. Section 69-3-114(a).

T.C.A. § 69-3-114(a) states:

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.



## **ORDER AND ASSESSMENT**

### **XXII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 7 days of receipt of this ORDER, establish effective EPSC measures on-site such that sediment is not allowed to leave the site or enter waters of the state.
2. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
3. The Respondent shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the CHEFO at Suite 550 - State Office Building, 540 McCallie Avenue, Chattanooga, Tennessee 37402, and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534.
4. The Respondent shall, within 14 days of receipt of this ORDER, submit a SWPPP that conforms to the requirements of the TNCGP. This SWPPP should be accompanied by a map that clearly shows the site boundaries and the entire planned area of disturbance.

The SWPPP shall be prepared by a licensed professional engineer and shall be submitted to the CHEFO at the address shown in item 3, above.

5. The Respondent shall, within 60 days of receipt of this ORDER, submit to the division a CAP to remove the accumulated sediment from the affected segments of the tributaries to Firescald Creek and restore those affected segments to their original condition. The CAP shall be prepared by a licensed professional engineer, landscape architect, or other competent professional and shall include a timetable for implementation of the actions proposed in the CAP. The Respondent shall submit the CAP to the CHEFO for review and approval and a copy of the CAP to the E&C Section, at the respective addresses shown in item 3, above. The Respondent must correct any deficiencies the division finds upon review of the CAP and the corrected CAP should be resubmitted to the division within 30 days of notification of the deficiencies.
6. The Respondent shall, within 30 days of receipt of written approval of the CAP, initiate the approved actions. The written approval of the CAP by the division will constitute authorization for sediment removal and stream restoration and no additional ARAP coverage is required. The Respondent shall submit written notification to the division that work has begun at the time the Respondent initiates the CAP. The Respondent shall submit the written notification to the CHEFO and a copy of the written notification to the E&C Section, at the respective addresses shown in item 3, above.
7. The Respondent shall, within 120 days of initiating the approved CAP, but not later than June 30, 2008, complete the CAP and submit written notification of completion to the division. The Respondent shall submit the written notification to the CHEFO and shall

submit a copy of the written notification to the E&C Section, at the respective addresses shown in item 3, above.

8. The Respondent shall pay DAMAGES to the division in amount of ONE THOUSAND SEVEN HUNDRED SEVENTY TWO DOLLARS AND NINETY FIVE CENTS (\$1,772.95).
9. The Respondent shall pay a CIVIL PENALTY of FIFTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$57,500.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondent shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of FOURTEEN THOUSAND FIVE HUNDRED DOLLARS (\$14,500.00).
  - b. If the Respondent fails to comply with Part XXII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
  - c. If the Respondent fails to comply with Part XXII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
  - d. If the Respondent fails to comply with Part XXII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.

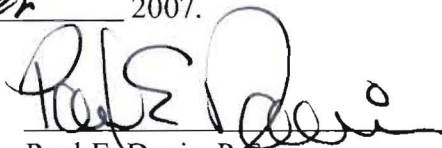
- e. If the Respondent fails to comply with Part XXII, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- f. If the Respondent fails to comply with Part XXII, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- g. If the Respondent fails to comply with Part XXII, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- h. If the Respondent fails to comply with Part XXII, item 7 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 30<sup>th</sup> day of October 2007.

  
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Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER

AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243.